

**TREASURY – TAXATION  
DIVISION OF TAXATION**

**SSTP**

**Proposed New Rules: N.J.A.C. 18:XX**

Authorized By: Robert K. Thompson, Director, Division of Taxation.

Authority: P.L. , c.

Proposal Number:

Effective Dates:

Expiration Date:

Submit written comments by 2005 to:

Nicholas Catalano

Chief, Regulatory Services

Division of Taxation

50 Barrack Street

P.O. Box 269

Trenton, New Jersey 08695-0269

The agency proposal follows:

**Summary**

The Streamlined Sales and Use Tax Agreement was enacted into law as P.L. c. (N.J.S.A.) and became effective for transactions occurring on and after [month] 1, 2005. The Streamlined Sales and Use Tax Agreement accomplishes several highly desirable goals in tax administration which enable the State of New Jersey to join with several other states and the District of Columbia to continue the task of seeking common definitions and uniformly understood tax principles. It provides for uniform determinations of what is and, more importantly from any seller or purchaser's point-of-view, what is not subject to sales and use tax. The proposed new Rules assist vendors and consumers by clarifying and explaining the administrative aspects of the law.

These Rules explain changes to the administration of exemption certificates, the filing of tax returns, certification of service providers and automated systems, seller participation and the remitting of funds.

**Social Impact**

The Streamlined Sales and Use Tax Rules were adopted to provide vendors and consumers with guidance and assistance in the administration and implementation of the Streamlined Sales and Use Tax Agreement. The law lessens the burden for sellers in complying with the Sales and Use Tax Act.

**Economic Impact**

Enactment of these Rules would generally be revenue neutral. These Rules conform New Jersey's Sales and Use Tax Act to the Streamlined Sales and Use Tax

Agreement. Although the State may lose revenue with the adoption of the new bad debt Rules, this would be offset by other areas of sales tax taxation that will raise revenue. In the long term, these Rules will protect the current sales tax base and with federal government action, result in increased ability to collect sales tax that is due to the State.

#### **Federal Standards Statement**

The proposed new Rules do not contain requirements that exceed any requirements imposed by Federal law. The proposed new Rules represent policies of the State of New Jersey regarding implementation of the applicable New Jersey statutes that are independent of Federal requirements or standards. The administration of Rules addressing these issues at the state level is an independent and separate jurisdiction.

#### **Jobs Impact**

The Division does not anticipate that jobs will be generated or lost as the result of the new proposed Rules.

#### **Agriculture Industry Impact**

The proposed new Rules are not expected to impact the agriculture industry in New Jersey.

#### **Regulatory Flexibility Statement**

The proposed Rules impose a duty to collect and remit sales and use tax on all vendors, whether or not they are a small business as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16, et. seq. Any exemption for small businesses would not appear to be in compliance with the statute.

Since vendors are already required to file returns and remit New Jersey sales tax, these Rules do not impose a substantial burden. However, vendors will be required to file new uniform tax returns and follow new uniform rules for the remittance of funds. Therefore, changes to computer software may have to be implemented. Each vendor is free to choose to make expenditures or to retain the services of a professional, in the process of complying with the Rules, and costs would be based on such choices.

However, any costs incurred in complying with the new Rules will be outweighed by the lesser burdens of complying with the Sales and Use Tax Act which the Streamlined Sales and Use Tax Agreement creates. For instance, the Streamlined Sales and Use Tax Agreement creates common definitions and provides for uniform determinations of what is and what is not subject to sales and use tax while retaining the State's authority to decide whether or not to tax specific property and services. Although changes to existing tax policy will result, these changes will be beneficial to the competent administration of New Jersey's laws and regulations.

#### **Smart Growth Impact**

The proposed new Rules will not have an impact on the growth, development, or redevelopment of the State's urban or suburban areas with regard to existing or proposed land use, protection of open space or transportation systems. Therefore, the Rules proposed will not impact the achievement of Smart Growth or the implementation of the State Development and Redevelopment Plan.

**Full text** of the proposed new rules follows:

**18:XX-1 Administration of Exemptions**

- A. The Division shall observe the following provisions when a purchaser claims an exemption:
1. The seller shall obtain identifying information of the purchaser and the reason for claiming a tax exemption at the time of the purchase as determined by the governing board.
  2. A purchaser is not required to provide a signature to claim an exemption from tax unless a paper exemption certificate is used.
  3. The seller shall use the standard form for claiming an exemption electronically as adopted by the governing board.
  4. The seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurred.
  5. The Division may utilize a system wherein the purchaser, exempt from the payment of the tax, is issued an identification number that shall be presented to the seller at the time of the sale.
  6. The seller shall maintain proper records of exempt transactions and provide them to the Division when requested.
  7. The Division shall administer use-based and entity-based exemptions when practicable through a direct pay permit, an exemption certificate, or another means that does not burden sellers.
  8. After December 31, 2007, in the case of drop shipment sales, the Division will allow a third party vendor (e.g., drop shipper) to claim a resale exemption based on an exemption certificate provided by its customer/re-seller or any other acceptable information available to the third party vendor evidencing qualification for a resale exemption, regardless of whether the customer/re-seller is registered to collect and remit sales and use tax in the state where the sale is sourced.
- B. **(Effective through December 31, 2007)** The Division shall relieve sellers that follow the requirements of this section from any tax otherwise applicable if it is determined that the purchaser improperly claimed an exemption and will hold the purchaser liable for the nonpayment of tax. This relief from liability does not apply to a seller who fraudulently fails to collect the tax or solicits purchasers to participate in the unlawful claim of an exemption.
- C. **(Effective on January 1, 2008)** The Division shall relieve sellers that follow the requirements of this section from the tax otherwise applicable if it is determined that the purchaser improperly claimed an exemption and will hold the purchaser liable for the nonpayment of tax. This relief from liability does not apply to a seller who fraudulently fails to collect tax; to a seller who solicits purchasers to participate in the unlawful claim of an exemption; to a seller who accepts an exemption certificate when the purchaser claims an entity-based exemption when (1) the subject of the transaction sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller and (2) the state in which that location resides provides an exemption certificate that clearly and affirmatively indicates (e.g. graying out exemption

reason types on the uniform form and posting it on a state's web site is an indicator) that the claimed exemption is not available in that state; or to a seller who accepts an exemption certificate claiming multiple points of use for tangible personal property other than computer software for which an exemption claiming multiple points of use is acceptable under Section X of P.L. 2005, ch.

- D. **(Effective on January 1, 2008)** The Division shall relieve a seller of the tax otherwise applicable if the seller obtains a fully completed exemption certificate or captures the relevant data elements required under the Streamlined Agreement within 90 days subsequent to the date of sale.
1. If the seller has not obtained an exemption certificate or all relevant data elements as provided above, the seller may, within 120 days subsequent to a request for substantiation by the Division, either prove that the transaction was not subject to tax by other means or obtain a fully completed exemption certificate from the purchaser, taken in good faith.
  2. Nothing in this section shall affect the ability of the Division to require purchasers to update exemption certificate information or to reapply with the State to claim certain exemptions.
  3. Notwithstanding the aforementioned, the Division shall relieve a seller of the tax otherwise applicable if it obtains a blanket exemption certificate for a purchaser with which the seller has a recurring business relationship. The Division may not request from the seller renewal of blanket certificates or updates of exemption certificate information or data elements when there is a recurring business relationship between the buyer and seller. For purposes of this section "a recurring business relationship" is defined as at least one sale transaction within a period of twelve consecutive months.

### **18:XX-2 Tax Returns**

The Division shall:

- A. Require that only one tax return for each taxing period for each seller be filed.
- B. Require that returns be due no sooner than the twentieth day of the month following the month in which the transaction occurred.
- C. Allow any Model 1, Model 2, or Model 3 seller to submit its sales and use tax returns in a simplified format that does not include more data fields than permitted by the governing board. The Division may require additional informational returns to be submitted not more frequently than every six months under a staggered system developed by the governing board.
- D. Allow any seller that is registered under the Agreement, which does not have a legal requirement to register with the Division, and is not a Model 1, 2, or 3 seller, to submit its sales and use tax returns as follows:
  1. Upon registration, the Division shall provide to the seller the returns required by the state.
  2. The Division may require a seller to file a return anytime within one year of the month of initial registration, and future returns may be required on an annual basis in succeeding years.
  3. In addition to the returns required in subsection (D)(2), the Division may require sellers to submit returns in the month following any month in which

they have accumulated State and local tax funds for the State in the amount of one thousand dollars or more.

- E. Participate with other member states in developing a more uniform sales and use tax return that, when completed, would be available to all sellers.
- F. Require, at the Division's discretion, all Model 1, 2, and 3 sellers to file returns electronically.

### **18:XX-3 Rules For Remittance of Funds**

The Division shall:

- A. Require only one remittance for each return except as provided in this subsection. If any additional remittance is required, it may only be required from sellers that collect more than thirty thousand dollars in sales and use taxes in New Jersey during the preceding calendar year as provided herein. The amount of the additional remittance shall be determined through a calculation method rather than actual collections and shall not require the filing of an additional return.
- B. Require, at the Division's discretion, all remittances from sellers under Models 1, 2, and 3 to be remitted electronically.
- C. Allow for electronic payments by both ACH Credit and ACH Debit.
- D. Provide an alternative method for making "same day" payments if an electronic funds transfer fails.
- E. Provide that if a due date falls on a legal banking holiday in New Jersey, the taxes are due to that state on the next succeeding business day.
- F. Require that any data that accompanies a remittance be formatted using uniform tax type and payment type codes approved by the governing board.

### **18:XX-4 Certification of Service Providers and Automated Systems**

- A. For purposes of complying with the provisions of N.J.S.A. 54:32B-15, only certified automated systems and service providers certified by the governing board may be selected. The governing board shall certify automated systems and service providers to aid in the administration of sale and use tax collections.
- B. The governing board may certify a person as a CSP if the person meets all of the following requirements:
  - 1. The person uses a CAS;
  - 2. The person integrates its CAS with the system of a seller for whom the person collects tax so that the tax due on a sale is determined at the time of the sale;
  - 3. The person agrees to remit the taxes it collects at the time and in the manner specified by the member states;
  - 4. The person agrees to file returns on behalf of the sellers for whom it collects tax;
  - 5. The person agrees to protect the privacy of tax information it obtains in accordance with Section 321 of the Agreement; and
  - 6. The person enters into a contract with the member states and agrees to comply with the terms of the contract.
- C. The governing board may certify a software program as a CAS if the governing board determines that the program meets all of the following requirements:

1. It determines the applicable state and local sales and use tax rate for a transaction, in accordance with Sections 309 to 315, inclusive;
2. It determines whether or not an item is exempt from tax;
3. It determines the amount of tax to be remitted for each taxpayer for a reporting period;
4. It can generate reports and returns as required by the governing board; and
5. It can meet any other requirement set by the governing board.

The governing board may establish one or more sales tax performance standards for Model 3 sellers that meet the eligibility criteria set by the governing board and that developed a proprietary system to determine the amount of sales and use tax due on transactions.

#### **18:XX-5 Seller Participation**

- A. The Division shall provide an online registration system that will allow sellers to register in all the member states.
- B. By registering, the seller agrees to collect and remit sales and use taxes for all taxable sales into the member states, including member states joining after the seller's registration. Withdrawal or revocation of a member state shall not relieve a seller of its responsibility to remit taxes previously or subsequently collected on behalf of the state.
- C. If the Division has a requirement to register prior to registering under the Agreement, the seller may be required to provide additional information to complete the registration process or the seller may choose to register directly with those states.
- D. If New Jersey has withdrawn or been expelled from the Agreement, it shall not use registration with the central registration system and the collection of sales and use taxes in New Jersey as a factor in determining whether the seller has nexus with New Jersey for any tax at any time.

(NOTE: The current rules for the administration of bad debts located in N.J.A.C. 18:24-23 shall be repealed).